



## 96TH GENERAL ASSEMBLY

### State of Illinois

### 2009 and 2010

### HB4141

Introduced 2/27/2009, by Rep. Mike Boland

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1208	from Ch. 110, par. 15-1208
735 ILCS 5/15-1504	from Ch. 110, par. 15-1504
735 ILCS 5/15-1506	from Ch. 110, par. 15-1506

Amends the Code of Civil Procedure. Provides that "mortgagee" means (i) the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage (instead of holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder) and (ii) any person claiming through a mortgagee as successor. Provides that a foreclosure complaint shall include a statement of the capacity in which the plaintiff brings the foreclosure such as legal holder of the indebtedness or the trustee under a trust deed (instead of as legal holder of the indebtedness, pledgee, agent, trustee under a trust deed or otherwise), along with copies of documents upon which the plaintiff relies and which show the plaintiff to be the mortgagee, as defined in the Act. Provides that a foreclosure judgment shall include: allegations of fact in the complaint that are not denied by the verified answer or counterclaim (instead of not denied by the verified answer or counterclaim or where the defendant states in an affidavit that he or she has no knowledge sufficient to form a belief) are sufficient evidence thereof; the last date for redemption; court rulings as to each request for relief; tangible evidence of who holds the indebtedness, the indebtedness, and the mortgage foreclosed (instead of the indebtedness and the mortgage foreclosed) shall be exhibited to and filed with the court; and if the plaintiff is not the original mortgagee, specific findings of fact concerning the plaintiff's capacity to bring the foreclosure action as legal holder of the indebtedness or the trustee of a trust deed and a determination of whether this capacity legally entitles the plaintiff to bring the action (instead of a foreclosure judgment shall include the last date for redemption and court rulings as to each request for relief). Effective immediately.

LRB096 04215 AJO 22402 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by  
5 changing Sections 15-1208, 15-1504, and 15-1506 as follows:

6 (735 ILCS 5/15-1208) (from Ch. 110, par. 15-1208)

7 Sec. 15-1208. Mortgagee. "Mortgagee" means (i) the holder  
8 of an indebtedness or obligee of a non-monetary obligation  
9 secured by a mortgage ~~or any person designated or authorized to~~  
10 ~~act on behalf of such holder~~ and (ii) any person claiming  
11 through a mortgagee as successor.

12 (Source: P.A. 84-1462.)

13 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

14 Sec. 15-1504. Pleadings and service.

15 (a) Form of Complaint. A foreclosure complaint may be in  
16 substantially the following form:

17 (1) Plaintiff files this complaint to foreclose the  
18 mortgage (or other conveyance in the nature of a mortgage)  
19 (hereinafter called "mortgage") hereinafter described and  
20 joins the following person as defendants: (here insert  
21 names of all defendants).

22 (2) Attached as Exhibit "A" is a copy of the mortgage

1 and as Exhibit "B" is a copy of the note secured thereby.

2 (3) Information concerning mortgage:

3 (A) Nature of instrument: (here insert whether a  
4 mortgage, trust deed or other instrument in the nature  
5 of a mortgage, etc.)

6 (B) Date of mortgage:

7 (C) Name of mortgagor:

8 (D) Name of mortgagee:

9 (E) Date and place of recording:

10 (F) Identification of recording: (here insert book  
11 and page number or document number)

12 (G) Interest subject to the mortgage: (here insert  
13 whether fee simple, estate for years, undivided  
14 interest, etc.)

15 (H) Amount of original indebtedness, including  
16 subsequent advances made under the mortgage:

17 (I) Both the legal description of the mortgaged  
18 real estate and the common address or other information  
19 sufficient to identify it with reasonable certainty:

20 (J) Statement as to defaults, including, but not  
21 necessarily limited to, date of default, current  
22 unpaid principal balance, per diem interest accruing,  
23 and any further information concerning the default:

24 (K) Name of present owner of the real estate:

25 (L) Names of other persons who are joined as  
26 defendants and whose interest in or lien on the

1 mortgaged real estate is sought to be terminated:

2 (M) Names of defendants claimed to be personally  
3 liable for deficiency, if any:

4 (N) Capacity in which plaintiff brings this  
5 foreclosure (here indicate whether plaintiff is the  
6 legal holder of the indebtedness ~~or, a pledgee, an~~  
7 ~~agent,~~ the trustee under a trust deed ~~or otherwise,~~ as  
8 appropriate); attached as Exhibit "C" are copies of all  
9 documents which demonstrate that the plaintiff is the  
10 mortgagee, as defined in Section 15-1208:

11 (O) Facts in support of redemption period shorter  
12 than the longer of (i) 7 months from the date the  
13 mortgagor or, if more than one, all the mortgagors (I)  
14 have been served with summons or by publication or (II)  
15 have otherwise submitted to the jurisdiction of the  
16 court, or (ii) 3 months from the entry of the judgment  
17 of foreclosure, if sought (here indicate whether based  
18 upon the real estate not being residential,  
19 abandonment, or real estate value less than 90% of  
20 amount owed, etc.):

21 (P) Statement that the right of redemption has been  
22 waived by all owners of redemption, if applicable:

23 (Q) Facts in support of request for attorneys' fees  
24 and of costs and expenses, if applicable:

25 (R) Facts in support of a request for appointment  
26 of mortgagee in possession or for appointment of

1 receiver, and identity of such receiver, if sought:

2 (S) Offer to mortgagor in accordance with Section  
3 15-1402 to accept title to the real estate in  
4 satisfaction of all indebtedness and obligations  
5 secured by the mortgage without judicial sale, if  
6 sought:

7 (T) Name or names of defendants whose right to  
8 possess the mortgaged real estate, after the  
9 confirmation of a foreclosure sale, is sought to be  
10 terminated and, if not elsewhere stated, the facts in  
11 support thereof:

12 REQUEST FOR RELIEF

13 Plaintiff requests:

14 (i) A judgment of foreclosure and sale.

15 (ii) An order granting a shortened redemption period,  
16 if sought.

17 (iii) A personal judgment for a deficiency, if sought.

18 (iv) An order granting possession, if sought.

19 (v) An order placing the mortgagee in possession or  
20 appointing a receiver, if sought.

21 (vi) A judgment for attorneys' fees, costs and  
22 expenses, if sought.

23 (b) Required Information. A foreclosure complaint need  
24 contain only such statements and requests called for by the  
25 form set forth in subsection (a) of Section 15-1504 as may be

1 appropriate for the relief sought. Such complaint may be filed  
2 as a counterclaim, may be joined with other counts or may  
3 include in the same count additional matters or a request for  
4 any additional relief permitted by Article II of the Code of  
5 Civil Procedure.

6 (c) Allegations. The statements contained in a complaint in  
7 the form set forth in subsection (a) of Section 15-1504 are  
8 deemed and construed to include allegations as follows:

9 (1) on the date indicated the obligor of the  
10 indebtedness or other obligations secured by the mortgage  
11 was justly indebted in the amount of the indicated original  
12 indebtedness to the original mortgagee or payee of the  
13 mortgage note;

14 (2) that the exhibits attached are true and correct  
15 copies of the mortgage and note and are incorporated and  
16 made a part of the complaint by express reference;

17 (3) that the mortgagor was at the date indicated an  
18 owner of the interest in the real estate described in the  
19 complaint and that as of that date made, executed and  
20 delivered the mortgage as security for the note or other  
21 obligations;

22 (4) that the mortgage was recorded in the county in  
23 which the mortgaged real estate is located, on the date  
24 indicated, in the book and page or as the document number  
25 indicated;

26 (5) that defaults occurred as indicated;

1           (6) that at the time of the filing of the complaint the  
2 persons named as present owners are the owners of the  
3 indicated interests in and to the real estate described;

4           (7) that the mortgage constitutes a valid, prior and  
5 paramount lien upon the indicated interest in the mortgaged  
6 real estate, which lien is prior and superior to the right,  
7 title, interest, claim or lien of all parties and nonrecord  
8 claimants whose interests in the mortgaged real estate are  
9 sought to be terminated;

10          (8) that by reason of the defaults alleged, if the  
11 indebtedness has not matured by its terms, the same has  
12 become due by the exercise, by the plaintiff or other  
13 persons having such power, of a right or power to declare  
14 immediately due and payable the whole of all indebtedness  
15 secured by the mortgage;

16          (9) that any and all notices of default or election to  
17 declare the indebtedness due and payable or other notices  
18 required to be given have been duly and properly given;

19          (10) that any and all periods of grace or other period  
20 of time allowed for the performance of the covenants or  
21 conditions claimed to be breached or for the curing of any  
22 breaches have expired;

23          (11) that the amounts indicated in the statement in the  
24 complaint are correctly stated and if such statement  
25 indicates any advances made or to be made by the plaintiff  
26 or owner of the mortgage indebtedness, that such advances

1           were, in fact, made or will be required to be made, and  
2           under and by virtue of the mortgage the same constitute  
3           additional indebtedness secured by the mortgage; and

4           (12) that, upon confirmation of the sale, the holder of  
5           the certificate of sale or deed issued pursuant to that  
6           certificate or, if no certificate or deed was issued, the  
7           purchaser at the sale will be entitled to full possession  
8           of the mortgaged real estate against the parties named in  
9           clause (T) of paragraph (3) of subsection (a) of Section  
10          15-1504 or elsewhere to the same effect; the omission of  
11          any party indicates that plaintiff will not seek a  
12          possessory order in the order confirming sale unless the  
13          request is subsequently made under subsection (h) of  
14          Section 15-1701 or by separate action under Article 9 of  
15          this Code.

16          (d) Request for Fees and Costs. A statement in the  
17          complaint that plaintiff seeks the inclusion of attorneys' fees  
18          and of costs and expenses shall be deemed and construed to  
19          include allegations that:

20               (1) plaintiff has been compelled to employ and retain  
21               attorneys to prepare and file the complaint and to  
22               represent and advise the plaintiff in the foreclosure of  
23               the mortgage and the plaintiff will thereby become liable  
24               for the usual, reasonable and customary fees of the  
25               attorneys in that behalf;

26               (2) that the plaintiff has been compelled to advance or

1 will be compelled to advance, various sums of money in  
2 payment of costs, fees, expenses and disbursements  
3 incurred in connection with the foreclosure, including,  
4 without limiting the generality of the foregoing, filing  
5 fees, stenographer's fees, witness fees, costs of  
6 publication, costs of procuring and preparing documentary  
7 evidence and costs of procuring abstracts of title, Torrens  
8 certificates, foreclosure minutes and a title insurance  
9 policy;

10 (3) that under the terms of the mortgage, all such  
11 advances, costs, attorneys' fees and other fees, expenses  
12 and disbursements are made a lien upon the mortgaged real  
13 estate and the plaintiff is entitled to recover all such  
14 advances, costs, attorneys' fees, expenses and  
15 disbursements, together with interest on all advances at  
16 the rate provided in the mortgage, or, if no rate is  
17 provided therein, at the statutory judgment rate, from the  
18 date on which such advances are made;

19 (4) that in order to protect the lien of the mortgage,  
20 it may become necessary for plaintiff to pay taxes and  
21 assessments which have been or may be levied upon the  
22 mortgaged real estate;

23 (5) that in order to protect and preserve the mortgaged  
24 real estate, it may also become necessary for the plaintiff  
25 to pay liability (protecting mortgagor and mortgagee),  
26 fire and other hazard insurance premiums on the mortgaged

1 real estate, make such repairs to the mortgaged real estate  
2 as may reasonably be deemed necessary for the proper  
3 preservation thereof, advance for costs to inspect the  
4 mortgaged real estate or to appraise it, or both, and  
5 advance for premiums for pre-existing private or  
6 governmental mortgage insurance to the extent required  
7 after a foreclosure is commenced in order to keep such  
8 insurance in force; and

9 (6) that under the terms of the mortgage, any money so  
10 paid or expended will become an additional indebtedness  
11 secured by the mortgage and will bear interest from the  
12 date such monies are advanced at the rate provided in the  
13 mortgage, or, if no rate is provided, at the statutory  
14 judgment rate.

15 (e) Request for Foreclosure. The request for foreclosure is  
16 deemed and construed to mean that the plaintiff requests that:

17 (1) an accounting may be taken under the direction of  
18 the court of the amounts due and owing to the plaintiff;

19 (2) that the defendants be ordered to pay to the  
20 plaintiff before expiration of any redemption period (or,  
21 if no redemption period, before a short date fixed by the  
22 court) whatever sums may appear to be due upon the taking  
23 of such account, together with attorneys' fees and costs of  
24 the proceedings (to the extent provided in the mortgage or  
25 by law);

26 (3) that in default of such payment in accordance with

1 the judgment, the mortgaged real estate be sold as directed  
2 by the court, to satisfy the amount due to the plaintiff as  
3 set forth in the judgment, together with the interest  
4 thereon at the statutory judgment rate from the date of the  
5 judgment;

6 (4) that in the event the plaintiff is a purchaser of  
7 the mortgaged real estate at such sale, the plaintiff may  
8 offset against the purchase price of such real estate the  
9 amounts due under the judgment of foreclosure and order  
10 confirming the sale;

11 (5) that in the event of such sale and the failure of  
12 any person entitled thereto to redeem prior to such sale  
13 pursuant to this Article, the defendants made parties to  
14 the foreclosure in accordance with this Article, and all  
15 nonrecord claimants given notice of the foreclosure in  
16 accordance with this Article, and all persons claiming by,  
17 through or under them, and each and any and all of them,  
18 may be forever barred and foreclosed of any right, title,  
19 interest, claim, lien, or right to redeem in and to the  
20 mortgaged real estate; and

21 (6) that if no redemption is made prior to such sale, a  
22 deed may be issued to the purchaser thereat according to  
23 law and such purchaser be let into possession of the  
24 mortgaged real estate in accordance with Part 17 of this  
25 Article.

26 (f) Request for Deficiency Judgment. A request for a

1 personal judgment for a deficiency in a foreclosure complaint  
2 if the sale of the mortgaged real estate fails to produce a  
3 sufficient amount to pay the amount found due, the plaintiff  
4 may have a personal judgment against any party in the  
5 foreclosure indicated as being personally liable therefor and  
6 the enforcement thereof be had as provided by law.

7 (g) Request for Possession or Receiver. A request for  
8 possession or appointment of a receiver has the meaning as  
9 stated in subsection (b) of Section 15-1706.

10 (h) Answers by Parties. Any party may assert its interest  
11 by counterclaim and such counterclaim may at the option of that  
12 party stand in lieu of answer to the complaint for foreclosure  
13 and all counter complaints previously or thereafter filed in  
14 the foreclosure. Any such counterclaim shall be deemed to  
15 constitute a statement that the counter claimant does not have  
16 sufficient knowledge to form a belief as to the truth or  
17 falsity of the allegations of the complaint and all other  
18 counterclaims, except to the extent that the counterclaim  
19 admits or specifically denies such allegations.

20 (Source: P.A. 91-357, eff. 7-29-99.)

21 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

22 Sec. 15-1506. Judgment. (a) Evidence. In the trial of a  
23 foreclosure, the evidence to support the allegations of the  
24 complaint shall be taken in open court, except:

25 (1) where an allegation of fact in the complaint is not

1 denied by a party's verified answer or verified counterclaim,  
2 ~~or where a party pursuant to subsection (b) of Section 2-610 of~~  
3 ~~the Code of Civil Procedure states, or is deemed to have~~  
4 ~~stated, in its pleading that it has no knowledge of such~~  
5 ~~allegation sufficient to form a belief and attaches the~~  
6 ~~required affidavit,~~ a sworn verification of the complaint or a  
7 separate affidavit setting forth such fact is sufficient  
8 evidence thereof against such party and no further evidence of  
9 such fact shall be required; and

10 (2) where all the allegations of fact in the complaint have  
11 been proved by verification of the complaint or affidavit, the  
12 court upon motion supported by an affidavit stating the amount  
13 which is due the mortgagee, may ~~shall~~ enter a judgment of  
14 foreclosure as requested in the complaint.

15 (b) Instruments. In all cases the evidence of who the legal  
16 holder of the indebtedness is, the indebtedness itself, and the  
17 mortgage foreclosed shall be exhibited to the court and  
18 appropriately marked, and copies thereof shall be filed with  
19 the court.

20 (c) Summary and Default Judgments. Nothing in this Section  
21 15-1506 shall prevent a party from obtaining a summary or  
22 default judgment authorized by Article II of the Code of Civil  
23 Procedure.

24 (d) Notice of Entry of Default. When any judgment in a  
25 foreclosure is entered by default, notice of such judgment  
26 shall be given in accordance with Section 2-1302 of the Code of

1 Civil Procedure.

2 (e) Matters Required in Judgment. A judgment of foreclosure  
3 shall include the last date for redemption and all rulings of  
4 the court entered with respect to each request for relief set  
5 forth in the complaint. If the plaintiff in the action is not  
6 the original mortgagee, a judgment of foreclosure shall make  
7 specific findings of fact concerning the capacity in which the  
8 plaintiff brought the foreclosure action (legal holder of the  
9 indebtedness or the trustee under a trust deed) and a  
10 determination of whether this capacity legally entitles the  
11 plaintiff to bring the action. The omission of the date for  
12 redemption shall not extend the time for redemption or impair  
13 the validity of the judgment.

14 (f) Special Matters in Judgment. Without limiting the  
15 general authority and powers of the court, special matters may  
16 be included in the judgment of foreclosure if sought by a party  
17 in the complaint or by separate motion. Such matters may  
18 include, without limitation:

19 (1) a manner of sale other than public auction;

20 (2) a sale by sealed bid;

21 (3) an official or other person who shall be the officer to  
22 conduct the sale other than the one customarily designated by  
23 the court;

24 (4) provisions for non-exclusive broker listings or  
25 designating a duly licensed real estate broker nominated by one  
26 of the parties to exclusively list the real estate for sale;

1 (5) the fees or commissions to be paid out of the sale  
2 proceeds to the listing or other duly licensed broker, if any,  
3 who shall have procured the accepted bid;

4 (6) the fees to be paid out of the sale proceeds to an  
5 auctioneer, if any, who shall have been authorized to conduct a  
6 public auction sale;

7 (7) whether and in what manner and with what content signs  
8 shall be posted on the real estate;

9 (8) a particular time and place at which such bids shall be  
10 received;

11 (9) a particular newspaper or newspapers in which notice of  
12 sale shall be published;

13 (10) the format for the advertising of such sale, including  
14 the size, content and format of such advertising, and  
15 additional advertising of such sale;

16 (11) matters or exceptions to which title in the real  
17 estate may be subject at the sale;

18 (12) a requirement that title insurance in a specified form  
19 be provided to a purchaser at the sale, and who shall pay for  
20 such insurance;

21 (13) whether and to what extent bids with mortgage or other  
22 contingencies will be allowed;

23 (14) such other matters as approved by the court to ensure  
24 sale of the real estate for the most commercially favorable  
25 price for the type of real estate involved.

26 (g) Agreement of the Parties. If all of the parties agree

1 in writing on the minimum price and that the real estate may be  
2 sold to the first person who offers in writing to purchase the  
3 real estate for such price, and on such other commercially  
4 reasonable terms and conditions as the parties may agree, then  
5 the court shall order the real estate to be sold on such terms,  
6 subject to confirmation of the sale in accordance with Section  
7 15-1508.

8 (h) Postponement of Proving Priority. With the approval of  
9 the court prior to the entry of the judgment of foreclosure, a  
10 party claiming an interest in the proceeds of the sale of the  
11 mortgaged real estate may defer proving the priority of such  
12 interest until the hearing to confirm the sale.

13 (i) Effect of Judgment and Lien. (1) Upon the entry of the  
14 judgment of foreclosure, all rights of a party in the  
15 foreclosure against the mortgagor provided for in the judgment  
16 of foreclosure or this Article shall be secured by a lien on  
17 the mortgaged real estate, which lien shall have the same  
18 priority as the claim to which the judgment relates and shall  
19 be terminated upon confirmation of a judicial sale in  
20 accordance with this Article.

21 (2) Upon the entry of the judgment of foreclosure, the  
22 rights in the real estate subject to the judgment of  
23 foreclosure of (i) all persons made a party in the foreclosure  
24 and (ii) all nonrecord claimants given notice in accordance  
25 with paragraph (2) of subsection (c) of Section 15-1502, shall  
26 be solely as provided for in the judgment of foreclosure and in

1 this Article.

2 (Source: P.A. 85-907.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.